

BURR ALERT

South Carolina Homeowners Association Responses to COVID-19 – Operation and Use of Common Areas/Facilities

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We previously provided this attached update ([available here](#)) discussing issues for HOAs to consider in determining whether a community can limit access to roadways, bike paths and/or leisure trails that provide access to the community, in light of existing Executive Orders in South Carolina aimed at slowing the spread of the 2019 Novel Coronavirus (“COVID-19”). This article will address a related question facing HOAs: to what extent should common areas or common facilities remain open during COVID-19?

HOAs vary greatly in terms of size and financial resources from just 2-3 lots/residences up to higher end gated communities with thousands of single family lots/houses and multifamily dwellings. For smaller communities with relatively few common areas (e.g. a few private roadways and a little open space) this is less of an issue than for large communities with more common areas/facilities (e.g., community pool, golf course, tennis courts, gym, clubhouse, dining facilities, playground, community dock, equestrian stables). The question of closure is of particular concern for semi-private communities that allow members of the public to access and use certain HOA facilities. HOAs have questioned whether their private and semi-private facilities fall within the Governor’s orders. HOAs have correctly noted that many of the Governor’s orders speak to public facilities (e.g. public pools) and have questioned why they cannot provide their private or semi-private facilities to members.

FACILITIES WHICH MUST REMAIN CLOSED

Executive Order No. 2020-18 provides some guidance in this area, stating that certain recreational and athletic facilities “shall remain closed to non-employees and shall not be open for access or use by the public—to include members, if access or use is ordinarily restricted to or based on membership” (emphasis added). Among the facilities listed in Executive Order No. 2020-18 are:

- “Fitness and exercise centers and commercial gyms”
- “Spas and public or commercial swimming pools”
- “Group exercise facilities, to include yoga, barre, and spin studios or facilities”
- “Spectator Sports”
- “Sports that involve interaction in close proximity to and within less than six (6) feet of another person”
- “Activities that require the use of shared sporting apparatus and equipment”, and “Activities on commercial or public playground equipment.”

This makes it clear that certain facilities such as pools and gyms must remain closed until such time as the Governor issues a new executive order modifying or removing the restrictions on these types of facilities, **regardless of whether the facilities are restricted based on membership.**

FACILITIES WHICH MAY REMAIN OPEN

Even if an HOA's common areas or amenities are not among those specifically listed as non-essential (and therefore must remain closed), Executive Order No. 2020-21 directs all South Carolinians to remain in their residence unless "engaging in Essential Business, Essential Activities, or Critical Infrastructure Operations" as defined therein. Among the listed "Essential Activities" is

"[e]ngaging in outdoor exercise or recreational activities, provided that a minimum distance of six (6) feet is maintained during such activities between all persons who are not occupants of the same Residence" (emphasis added).

Therefore, certain outdoor recreational activities are permissible under the Executive Orders to date.

GOLF COURSES

One activity that is still allowed in South Carolina, at least for the time being, is golf. While at least 15 other states have banned playing golf (though some states are starting to lift those bans), the Executive Orders in South Carolina to date still allow for golf courses to remain open. We are aware of a number of communities that have temporarily closed their golf courses, as well as other courses continuing to operate, albeit with additional precautions in place. Examples of additional precautions include:

- spacing out tee times
- closing driving ranges where golfers are in close proximity
- closing clubhouses and requiring payment online or over the phone
- removing rakes from bunkers
- banning golf carts where golfers ride together
- requiring that the flag be left in the hole
- turning golf cups upside down or inserting an apparatus in the hole so the ball does not drop to the bottom of the cup and golfers do not have to reach inside
- requiring six feet of separation be maintained at all times.

For many golfers, the idea of a six (6) foot "gimme" putt may seem like the sort of change that they would like to make permanent.

CONCLUSION

It is important to note that our understanding of COVID-19 is changing daily, and we should all expect to see additional executive orders from Governor McMaster (as well as on a local level and possibly from the federal level) based on the shifting landscape. As the situation continues to evolve, Burr & Forman has a team of attorneys monitoring updates and providing additional guidance to our clients. If you have any questions regarding your HOA's response to COVID-19, please contact any of the following attorneys or the Burr attorney(s) with whom you regularly work.

Stay up to date by monitoring the latest COVID-19 resources on our [CORONAVIRUS RESOURCE CENTER](#).

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